

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TODD M. BOOK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO: 2:16-CV-0144-TOR

ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS

BEFORE THE COURT is United States’ Motion to Dismiss for Failure to State a Claim (ECF No. 9). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

Plaintiff Todd M. Book (“Plaintiff”) filed a Complaint, *see* ECF No. 6, on May 12, 2016, alleging that he was erroneously prohibited from purchasing a firearm. Defendant United States (“Defendant”) filed the instant motion to dismiss this action for failure to state a claim upon which relief can be granted. ECF No. 9.

## FACTS

The following facts are drawn from Plaintiff's complaint, and are accepted as true for purposes of the instant motion. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

Plaintiff was involved in an altercation with his brother resulting in a domestic violence allegation lodged against him by the City of Spokane. ECF No. 6 at 2. However, despite that allegation, Plaintiff pled guilty to one count of fourth degree assault in Spokane City Municipal Court on October 20, 2009. *Id.* The “Statement of Defendant on Plea of Guilty and Judgment and Sentence were both marked to indicate that . . . [Plaintiff] would not lose his firearm rights.” *Id.* at 2-3. In addition, the court stated on the record that Plaintiff would not lose his firearm rights. *Id.* at 3. Based on these facts, Plaintiff asserts that he should not be prohibited from firearm possession under Washington state law. *Id.* at 4-5. Plaintiff also asserts that federal law does not prohibit him from firearm possession because his conviction is not a “misdemeanor crime of domestic violence” under 18 U.S.C. § 922(g)(9). *Id.* at 4.

In December 2014, Plaintiff attempted to purchase a firearm. *Id.* at 3. The National Instant Criminal Background Check Service (“NICS”) initiated a background check, and denied Plaintiff’s application. *Id.* Between March 2015 and June 2, 2015, Plaintiff submitted several requests and supporting documents to

1 NICS to appeal the denial to no avail. *Id.* at 3-4. NICS repeatedly reported that  
2 Washington state law prohibits Plaintiff from possessing a firearm. *Id.*

3 Plaintiff asserts a single cause of action against Defendant pursuant to 18  
4 U.S.C. § 925A, requesting that the Court order NICS to update Plaintiff's  
5 application status to "proceed." *Id.* at 5.

## 6 DISCUSSION

### 7 A. Standard of Review

8 A motion to dismiss for failure to state a claim pursuant to Federal Rule of  
9 Civil Procedure 12(b)(6) tests the legal sufficiency of a plaintiff's claims. *Navarro*  
10 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A complaint must contain a "short and  
11 plain statement of the claim showing that the pleader is entitled to relief." Fed. R.  
12 Civ. P. 8(a)(2). To avoid dismissal under Rule 12(b)(6) for failure to state a claim,  
13 a plaintiff must allege "sufficient factual matter . . . to state a claim to relief that is  
14 plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In assessing  
15 whether Rule 8(a)(2) has been satisfied, a court must first identify the elements of  
16 the plaintiff's claim and then determine whether those elements could be proven on  
17 the facts pled. *See Iqbal*, 556 U.S. at 675.

18 In this evaluation, the court should draw all reasonable inferences in the  
19 plaintiff's favor, *see Sheppard v. David Evans & Assocs.*, 694 F.3d 1045, 1051 (9th  
20 Cir. 2012), but it need not accept "naked assertions devoid of further factual

1 enhancement.” *Iqbal*, 556 U.S. at 678 (internal quotations and citation omitted).

2 Dismissal is appropriate where the plaintiff fails to state a claim supportable by a  
3 cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
4 Cir. 1990) (citation omitted).

5 Here, Defendant seeks dismissal for Plaintiff’s failure to state a claim upon  
6 which the Court can provide relief, arguing that Plaintiff’s state law conviction for  
7 fourth degree assault qualifies as a prohibited offense under RCW 9.41.040(2)(a)(i)  
8 and that 18 U.S.C. § 922(b)(2) prohibits a firearms transfer if such action would  
9 violate state law. *See* ECF No. 9 at 2-3.

## 10 **B. Analysis**

11 Under 18 U.S.C. § 925A, a person denied a firearm pursuant to subsection  
12 (s) or (t) of section 922, may sue the United States (1) due to erroneous  
13 information by the State or NICS, or (2) if the person was not prohibited from  
14 possessing a firearm under subsection (g) or (n) of section 922. A person may  
15 petition a court for an order directing correction of the erroneous information, or  
16 that the transfer of the firearm be approved. 18 U.S.C. § 925A. Subsections (g)  
17 and (n) of section 922 prohibit certain categories of persons from receipt or  
18 possession of a firearm.

19 The NICS was established by the Brady Handgun Violence Prevention Act.  
20 *See* Pub. L. 103-159, 107 Stat. 1536 (1993). Congress empowered the Attorney

1 General to prescribe the regulations under which the NICS would function. *Id.* at  
2 § 103(h), 107 Stat. at 1542. As prescribed by law, an NICS background check is  
3 required for the purchase of a firearm from any licensed importer, manufacturer, or  
4 dealer. 18 U.S.C. § 922(t)(1).

5 Here, NICS denied Plaintiff's firearm purchase because Washington state  
6 law precludes possession by a person convicted of fourth degree assault against a  
7 family member. *See* § 922(t)(2); RCW 9.41.0401(2)(a)(i); ECF No. 6 at ¶¶ 5-7.  
8 Plaintiff argues that NICS's denial is erroneous. *See* ECF No. 6 at 5. At the  
9 outset, Plaintiff's Complaint does not explicitly state whether he was denied a  
10 firearm due to erroneous information relied on by the State or NICS, or because he  
11 was prohibited from receipt of a firearm under subsections (g) or (n) of section  
12 922. *See* 18 U.S.C. § 925A. The Court will broadly construe Plaintiff's Complaint  
13 and responsive briefing as essentially arguing both.

14 On one hand, Plaintiff asserts that federal law does not prohibit firearm  
15 possession under § 922(g).<sup>1</sup> ECF No. 6 at ¶ 9. On the other, Plaintiff alleges that  
16 Washington state law provides that he cannot be convicted of unlawful possession,  
17 which "stands to reason" that it is not unlawful for him to possess a firearm under  
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19 <sup>1</sup> Yet, the Court acknowledges Plaintiff's assertion that "this litigation  
20 presents questions of Washington state law only." *See* ECF No. 10 at 2, n.1.

1 state law. *See id.* at ¶¶ 10-11; ECF No. 10 at 4. The Court examines each of  
2 Plaintiff's theories in turn.

3 First, Plaintiff circuitously argues that the State or NICS relied on erroneous  
4 information in denying his firearm purchase because Washington law does not  
5 prohibit firearm possession when a sentencing court fails to inform a defendant of  
6 the prohibition in writing or orally under RCW 9.41.047(1)(a). *See* ECF No. 10 at  
7 5. Plaintiff primarily relies on *State v. Minor*, 162 Wash.2d 796, 804 (2008),  
8 where a court's failure to check a box to indicate firearm prohibition affirmatively  
9 misled the defendant to believe that he was not prohibited from possessing a  
10 firearm. There, the Washington Supreme Court reversed Minor's unlawful  
11 possession of a firearm conviction and dismissed the underlying charge. *Id.*  
12 Plaintiff argues that *Minor* is directly on point and demonstrates that he cannot be  
13 convicted of unlawful possession. ECF No. 10 at 3-4. From that springboard,  
14 Plaintiff then makes the leap to conclude that it is not unlawful for him to purchase  
15 or possess a firearm because he was not informed of the prohibition by the  
16 Spokane Municipal Court. *Id.*

17 Although the Court recognizes *Minor* for what it is worth, its holding is  
18 neither on point nor applicable here. *Minor* merely held that where the court  
19 provided affirmative, misleading information upon which defendant relied,  
20 defendant could not be convicted for unlawfully possessing a firearm. *Minor*, 162

1 Wash.2d at 804. In contrast, the Supreme Court in *Minor* distinguished *State v.*  
2 *Carter*, 127 Wash.App. 713, 720-21 (2005) (rejecting argument that defendant was  
3 affirmatively misled). *Minor*, 162 Wash.2d at 803. Later, the Washington  
4 Supreme Court further clarified that this lack of notice is only an affirmative  
5 defense to an unlawful firearms charge and that the State may rebut the defense by  
6 showing that the defendant “otherwise [had] notice of the prohibition against  
7 possession of firearms.” *State v. Breitung*, 173 Wash.2d 393, 404 (2011). Plaintiff  
8 is not challenging an unlawful possession conviction; he is merely attempting to  
9 purchase a firearm. That an unlawful possession conviction might be dismissed for  
10 a court’s failure to inform a defendant of his rights (whether orally, in writing, or  
11 otherwise) does not support a finding that NICS erroneously denied Plaintiff the  
12 right to purchase a firearm necessitating this Court to order erroneous information  
13 be corrected under 18 U.S.C. § 925A(1). Similarly, whether Plaintiff may have an  
14 affirmative defense for unlawful firearm possession has no bearing on the Court’s  
15 analysis here, given that this is not a criminal proceeding charging Defendant with  
16 unlawful firearm possession.

17 To the contrary, Plaintiff was convicted of fourth degree assault for an  
18 altercation with his brother, a gross misdemeanor carrying a maximum term of 364  
19 days in custody. RCW 9A.36.041(2). Under Washington law, it is unlawful to  
20 possess a firearm if one family or household member has been convicted of assault

1 in the fourth degree against another family or household member. RCW  
2 9.41.040(2)(a)(i). That is the case here.<sup>2</sup> Accordingly, the Court finds that the  
3 State and NICS did not rely on or provide erroneous information related to the  
4 denial of Plaintiff's attempt to purchase a firearm.

5 As to Plaintiff's second theory—that federal law does not prohibit him from  
6 firearm possession under section 922(g)—the Court finds that Plaintiff is correct in  
7 that narrow respect. A fourth degree assault conviction against a sibling does not  
8 fall within the confines of 18 U.S.C. § 922(g)(9). *See* § 921(33)(A) (defining the  
9 scope of a misdemeanor crime of domestic violence to include current or former  
10 spouse, parent or guardian, or person similarly situated). Defendant concedes that  
11 Plaintiff's fourth degree assault conviction does not qualify as a crime of domestic  
12 violence under 18 U.S.C. § 922(g)(9).

13 Notwithstanding, Plaintiff's limited remedies under 18 U.S.C. § 925A are  
14 either an order directing erroneous information be corrected or that the transfer be  
15 approved. Unless and until Plaintiff's state law conviction is overturned or his  
16 rights restored,<sup>3</sup> the Court can accomplish neither. For the reasons stated above,

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17 <sup>2</sup> Plaintiff is now on notice that his possession of a firearm is unlawful.  
18

19 <sup>3</sup> Plaintiff may petition the superior court to his have right to possess a firearm  
20 restored. *See* RCW 9.41.047(3).



1 the Court finds that there is no erroneous information to correct. The Court also  
2 finds that it is precluded from ordering that the transfer be approved because the  
3 sale of a firearm to Plaintiff is flatly prohibited under federal law regardless of  
4 whether Plaintiff's conviction falls under 18 U.S.C. § 922(g)(9). *See* 18 U.S.C.  
5 § 922(b)(2) (prohibiting transfer to "any person in any State where the purchase or  
6 possession by such person of such firearm would be in violation of any State  
7 law . . ."). Licensed firearm dealers may not conduct transactions that violate state  
8 law. *Id.* Likewise, NICS is only authorized to approve an applicant's firearm  
9 purchase provided that such action would not violate state law. *See* 18 U.S.C.  
10 § 922(t)(2).

11 Accordingly, because Plaintiff has failed to state a claim for which the Court  
12 may grant relief, Plaintiff's Complaint is **DISMISSED** with prejudice. Moreover,  
13 the Court dismisses Plaintiff's claim without leave to amend. While Plaintiff did  
14 not request leave to amend, Federal Rule of Civil Procedure 15(a) provides that  
15 leave to amend should be "freely give[n] . . . when justice so requires." Fed. R.  
16 Civ. P. 15(a)(2). However, in deciding whether leave to amend is appropriate, a  
17 court must consider, *inter alia*, whether an amendment would be futile. *United*  
18 *States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011); *Lopez v. Smith*, 203  
19 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[A] district court should grant leave to  
20 amend even if no request to amend the pleading was made, *unless* it determines

1 that the pleading could not possibly be cured by the allegation of other facts.”)  
2 (internal citations omitted) (emphasis added).

3 Here, given that Plaintiff’s Complaint could not possibly be cured by  
4 allegation of other facts, the Court concludes amendment would be futile.

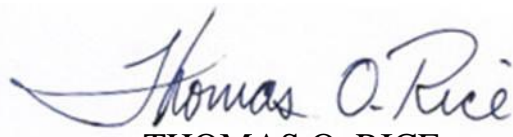
5 **ACCORDINGLY, IT IS ORDERED:**

- 6 1. Defendant’s Motion to Dismiss for Failure to State a Claim (ECF No. 9) is  
7 **GRANTED.**  
8 2. Plaintiff’s Complaint (ECF No. 6) is **DISMISSED with prejudice.**

9 The District Court Executive is hereby directed to enter this Order and  
10 Judgment accordingly, furnish copies to counsel, and **CLOSE** the file.

11 **DATED** October 21, 2016.



  
THOMAS O. RICE  
Chief United States District Judge